

EXHIBIT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ACE AMERICAN INSURANCE COMPANY,	:	
Petitioner,	:	Civil Action No. 2:13-CV-01613
v.	:	Hon. Mitchell S. Goldberg
MEADOWLANDS DEVELOPER LIMITED PARTNERSHIP,	:	ORAL ARGUMENT REQUESTED
Respondent.	:	
	:	

**SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT
MEADOWLANDS DEVELOPER LIMITED PARTNERSHIP'S
MOTION TO VACATE DEFAULT JUDGMENT**

I. INTRODUCTION

Petitioner ACE American Insurance Company (“ACE”) submits this Supplemental Memorandum of Law in further opposition to Respondent Meadowlands Developer Limited Partnership’s (“MDLP”) Motion to Vacate Default Judgment to bring the Court’s attention to relevant admissions made by Ronald Sanders, General Counsel of Colony Capital, during a deposition taken on January 7, 2015—*after* the pending Motion to Vacate was fully briefed—in connection with litigation pending in the State of New Jersey. Mr. Sanders’s testimony confirms certain key facts advanced by ACE in opposition to the Motion to Vacate, namely: (i) Colony Capital was the managing agent of Meadowlands LP; (ii) Mr. Sanders personally received notice related to the arbitration, including in 2013, when the Petition in this case was served on MDLP; and (iii) MDLP’s failure to defend the arbitration was knowing and deliberate. Excerpts of Mr. Sanders’s deposition transcript are attached hereto as Exhibit 1 (“Sanders Dep. Tr.”).

II. COLONY CAPITAL IS MANAGING AGENT OF MEADOWLANDS LP

Mr. Sanders's testimony unequivocally establishes that MDLP's claim that Colony Capital is "an entirely separate entity" from Meadowlands LP is disingenuous and wrong. *See Reply Br.* at 6, Docket No. 21. Mr. Sanders explained that Colony 7 and Colony 8, which are funds run by Colony Capital, own in part Meadowlands LP. Sanders Dep. Tr. at 42:14-18; *see also id.* at 39-40. Sanders also admitted that Colony Capital was the managing agent of Meadowlands LP. According to Sanders, Meadowlands Limited Partnership does not "conduct[] business on an ordinary day to day basis." *Id.* at 44:12-15. Instead, all of Meadowlands LP's business was conducted by Colony Capital:

Q: Do you know who, if anyone, handles whatever business affairs Meadowlands Limited Partnership does have on a day-to-day-basis?

THE WITNESS: Whatever management needs there are would primarily be conducted by Colony Capital in its role as manager for Colony Capital Investors 7 and Colony Capital Investors 8.

Id. at 44:16-25 (objections omitted).

III. SANDERS RECEIVED ARBITRATION DOCUMENTS SERVED ON MDLP THROUGH COLONY CAPITAL

Sanders also admitted that, through the normal procedures that Colony Capital has established to handle legal mail, he received copies of ACE arbitration documents served on MDLP through Colony Capital:

Q: Other than the subpoena, are you aware of any legal documents related to MDLP being received by any office of Colony Capital?

THE WITNESS: We have a system set up through our registered agent for service of process where, when they receive service of process through the computer system, that is forwarded to people within our offices and I believe that *in connection with ACE's arbitration claim against MDLP, that there would have been*

notices and other materials that, through this system, I would have seen.

Id. at 59:10-60:3 (objections omitted) (emphasis added). Sanders admitted that he received notices relating to the arbitration from as early as 2010 through August 2013, either directly, or through other staff at Colony Capital who would have forwarded such notices to him as a matter of policy. *Id.* at 61:9-14; 60:10-13, 73:8-16. Sanders specifically admitted that in 2013, when the Petition was filed, “I do remember getting notices relating to the arbitration.” *Id.* at 63:18-23; *see also* 144:7-12.

IV. SANDERS ADMITTED THAT HE INTENTIONALLY DISREGARDED NOTICE OF THE ARBITRATION

Sanders’s testimony confirms that MDLP’s decision to disregard the arbitration was knowing and deliberate. When asked what he did with the notices that he directly received regarding the arbitration, Sanders admitted that “I don’t believe I really did anything with them.” *Id.* at 64:2-3. In fact, when asked “who made the decision not to defend the arbitration,” Sanders admitted that “[t]hat was my decision . . . I made that decision not to defend.” *Id.* 148:10-12, 149:23-24.

Respectfully submitted,

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ACE American Insurance Company*

EXHIBIT

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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF NEW YORK

4 -----
5 IN THE MATTER OF THE APPLICATION OF:

6 MARKS, O'NEILL, O'BRIEN, DOHERTY &
7 KELLY, P.C.,

8 Petitioner,

9 - against -

10 INDEX NO:
11 157430/2014

12 For an Order taking the deposition
13 of Ronald Sanders,

14 Respondent,

15 And for the production of documents by
16 Ronald Sanders for the use in an action
17 pending in the State of New Jersey
18 entitled, ACE AMERICAN INSURANCE COMPANY v.
19 MEADOWLANDS DEVELOPER LIMITED PARTNERSHIP.

20 -----
21 Wednesday, January 7, 2015
22 10:00 a.m.
23 -----

24 Oral deposition of RONALD SANDERS, taken pursuant
25 to notice, was held at the law offices of DICKSTEIN
SHAPIRO, located at 1633 Broadway, New York, New
York, on the above date and time, before Mercedes
Marney, RPR, a Court Reporter and Notary Public in
the state of New York.

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2 | A P P E A R A N C E S (Continued)

4 FOR THE RESPONDENT:

6 DICKSTEIN SHAPIRO LLP

8 | BY: JEFFREY A. MITCHELL, ESQUIRE

9 1633 Broadway

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11 | 212.277.6691

12 | mitchellj@ dicksteinshapiro.com

1 Direct - R. Sanders

2 Q Let me try to get to it another way.

3 MR. MITCHELL: You didn't let him
4 finish his sentence.

5 MR. BRESLIN: That is true. I
6 apologize.

7 THE WITNESS: I was done anyway.

8 MR. BRESLIN: But I do apologize.

9 BY MR. BRESLIN:

10 Q Are there other tier companies, other
11 than those reflected on MDLP524, between Colony 7
12 and 8 and Meadowlands Limited Partnership?

13 A I don't believe so.

14 Q So this list of entities -- and by
15 "this list" I'm referring to the entities set
16 forth on 524 -- are they a complete list of the
17 entities that existed between Colony 7 and 8 and
18 Meadowlands Limited Partnership?

19 A I believe so.

20 Q When was Meadowlands Limited
21 Partnership created?

22 A I don't know that.

23 Q Who created Meadowlands Limited
24 Partnership?

25 A I believe it was Mills Corporation,

1 Direct - R. Sanders

2 | but I'm not sure about that.

3 Q Was Meadowlands Limited Partnership
4 an entity that Colony set up or did it acquire it
5 from another party?

6 A Can I hear that back again, please?

7 MR. BRESLIN: I will rephrase it.

8 BY MR. BRESLIN:

9 Q Did Colony or any of its affiliates
10 create Meadowlands Limited Partnership?

11 A I don't believe so.

12 Q Did Colony or any of its affiliates
13 acquire the entity, Meadowlands Limited
14 Partnership?

15 MR. MITCHELL: Object to the form of
16 the question.

17 | BY MR. BRESLIN:

18 Q Answer it, if you can.

19 A I don't think "acquire" is the right
20 term. It made -- those entities made an
21 investment into Meadowlands Limited Partnership.

22 Q Am I correct, then, that Meadowlands
23 Limited Partnership existed before Colony 7 and 8
24 made the investment?

25 MR. MITCHELL: Object to the form of

1 Direct - R. Sanders
2 the question.

3 THE WITNESS: I believe so.

4 BY MR. BRESLIN:

5 Q And Colony 7 and 8 invested the money
6 into Meadowlands Limited Partnership?

7 MR. MITCHELL: Object to the form of
8 the question.

9 BY MR. BRESLIN:

Q Answer it, if you can.

11 MR. MITCHELL: I assume you're not
12 doing it intentionally. You mean through
13 these various vehicles, because you leave
14 that out.

15 MR. BRESLIN: Correct. I mean
16 through the various vehicles.

17 MR. MITCHELL: Okay. The question
18 was not direct investment. The question
19 was, through the various vehicles, did 7
20 and 8 make the investment into Meadowlands
21 Limited Partnerships?

22 MR. BRESLIN: Yes.

23 THE WITNESS: Yes.

24 BY MR. BRESLIN:

25 Q And Meadowlands Limited Partnership

1 Direct - R. Sanders
2 was an extant existing entity, at the time this
3 investment was made through the other vehicles?

4 A I believe so.

5 Q Did you ever hold any position with
6 Meadowlands Limited Partnership?

7 A I don't know.

8 Q Is Meadowlands Limited Partnership
9 still in existence?

10 A Yes.

11 Q Does it do business today?

12 A No.

13 Q When was the last time, to your
14 knowledge, that Meadowlands Limited Partnership
15 did business?

16 A I wouldn't think that I would view
17 Meadowlands Limited Partnership really as ever
18 conducting a business. It had an interest in the
19 Xanadu project, but I don't -- it was not an
20 active operating company.

21 Q Other than the interest in the Xanadu
22 project, are you aware of any other projects or
23 investments or activities, and this is a compound
24 question, that Meadowlands Limited Partnership
25 engaged in?

1 Direct - R. Sanders

2 MR. MITCHELL: Objection to form.

3 MR. BRESLIN: I'll break it down.

4 MR. MITCHELL: Yes. Okay.

5 BY MR. BRESLIN:

6 Q Other than the Xanadu Investments,
7 are you aware of any other investments that
8 Meadowlands Limited Partnership ever undertook?

9 A No.

10 Q Other than the Xanadu Investment, are
11 you aware of any other business activities
12 undertaken by Meadowlands Limited Partnership?

13 A No.

14 Q Do you know who owns Meadowlands
15 Limited Partnership today?

16 A It would be, indirectly, the Colony 7
17 and Colony 8 funds, as well as, again indirectly,
18 a Dune Real Estate fund.

19 Q Spell that for me?

20 A Dune, D-U-N-E, Real Estate fund. And
21 I think, indirectly, one or two Kan-Am investment
22 vehicles. Kan, K-A-N, second word, A-M.

23 Q What is the Dune real estate fund?

24 A I'm not personally familiar with the
25 Dune Real Estate fund. But I believe it's a --

1 Direct - R. Sanders
2 similar to the Colony Investment funds -- it's a
3 fund that was sponsored by Dune Real Estate
4 Management to make real estate investments.

5 Q Is it a Colony Capital related entity
6 or is it a different entity?

7 A It is not related to Colony Capital.

8 Q And the two Kan-Am funds that you
9 mentioned, are they related to Colony Capital?

10 A No.

11 Q Did Meadowlands Limited Partnership
12 ever have a physical office that you were aware
13 of?

14 A I would assume that any legal entity
15 has to have a principal office, but I don't know
16 what Meadowlands Limited Partnership's office
17 would be.

18 Q Did you ever know where it was?

19 A No.

20 Q Do you know if Meadowlands Limited
21 Partnership ever had employees?

A I don't believe so.

23 Q Do you know if Meadowlands Limited
24 Partnership ever had any assets other than the
25 investment in the Xanadu that we've discussed

1 Direct - R. Sanders
2 previously?

3 A I don't believe so.

4 Q Who runs the day-to-day affairs of
5 Meadowlands Limited Partnership as of today, if
6 you know?

7 MR. MITCHELL: Object to the form of
8 the question. Lack of foundation.

9 MR. BRESLIN: I'll rephrase it if you
10 want.

11 BY MR. BRESLIN:

12 Q Do you know if Meadowlands Limited
13 Partnership conducts business on an ordinary
14 day-by-day basis?

15 A I don't believe it does.

16 Q Do you know who, if anyone, handles
17 whatever business affairs Meadowlands Limited
18 Partnership does have on a day-to-day basis?

19 MR. MITCHELL: Objection to form.

20 You can answer.

THE WITNESS: Whatever management needs there are would primarily be conducted by Colony Capital in its role as manager for Colony Capital Investors 7 and Colony Capital Investors 8.

1 Direct - R. Sanders

2 BY MR. BRESLIN:

3 Q And would the office of Meadowlands
4 Limited Partnership, to the extent it has an
5 office, be one of the Colony Capital offices?

6 A That, I don't know.

7 Q Do you know if you ever had a
8 position at Meadowlands Limited Partnership?

9 A I don't know that.

10 Q Are you familiar with an entity known
11 as Meadowlands Developer Limited Partnership?

12 A Yes.

13 Q Tell me what your understanding of
14 Meadowlands Developer Limited Partnership is.

15 A It is a subsidiary of Meadowlands
16 Limited Partnership.

17 Q When was it created?

18 A I believe it was in existence at the
19 time that Colony Investors 7 and Colony Investors
20 8 made their investments, and no, I don't know
21 when it would have been created.

22 MR. MITCHELL: Were you talking about
23 at the time of this document? Because at
24 the time frame of the answer I want to
25 make sure we're talking at the same time

1 Direct - R. Sanders

2 legal process served on Colony Capital?

3 A Yes.

4 Q Did you ever receive, at any time,

5 legal process served upon MDLP?

6 A Could you clarify a little for me,

7 please? When you say, have I received legal

8 process served upon MDLP, are you saying in my

9 capacity -- in what capacity?

0 Q Your capacity as general counsel.

1 A Of Colony Capital?

2 Q Correct.

3 A No, I don't believe in my capacity I

4 ever would have received.

5 Q Did you ever receive any legal

6 process served on MDLP, personally?

7 MR. MITCHELL: Object to the form of

8 the question.

9 THE WITNESS: No.

20 BY MR. BRESLIN:

21 Q Are you aware of any legal process o

22 MDLP ever being received in any office of Colony

23 Capital?

24 A Would the subpoena that came to me

25 count?

Direct - R. Sanders

Q In addition to that.

MR. MITCHELL: Could I hear the

question before the answer, please?

(The Record was read back.)

MR. MITCHELL: Object to the form of
the question to the extent it
characterizes the subpoena.

BY MR. BRESLIN:

10 Q Other than the subpoena, are you
11 aware of any legal documents related to MDLP
12 being received by any office of Colony Capital?

13 MR. MITCHELL: Object to the form of
14 the question.

15 You can answer.

16 THE WITNESS: I'm going to give a
17 little bit of an explanation answer.

18 We have a system set up through our
19 registered agent for service of process
20 where, when they receive service of
21 process through the computer system, that
22 is forwarded to people within our offices
23 and I believe that in connection with
24 ACE's arbitration claim against MDLP, that
25 there would have been notices and other

1 Direct - R. Sanders
2 materials that, through this system, I
3 would have seen.

4 BY MR. BRESLIN:

5 Q Okay. Who receives those notices --
6 or who received the notices related to ACE's
7 arbitration demand?

8 MR. MITCHELL: Object to the form of
9 the question.

10 THE WITNESS: Through this system --
11 I'll get into a little bit of detail -- my
12 assistant. So I think I also get the
13 e-mail notice from CSC.

14 | BY MR. BRESLIN:

15 Q CSC is your registered agent?

16 A That's the registered agent for MDLP,
17 or was, I don't know if it still is or not but it
18 was at the time.

19 And my assistant gets those also.
20 She reviews them. And she forwards them as
21 appropriate. So I believe that, with respect to,
22 as I said, the ACE arbitration matters, that she
23 would have forwarded those to me to review.

24 O What's the name of your assistant?

A Her name -- now with -- my current

1 Direct - R. Sanders
2 assistant is Maggie. I'm going to try to spell
3 it. I think this is the correct spelling,
4 W-D-I-O-W-A-K, I believe.

5 Q Let's try to make this easier. What
6 period of time are we discussing here with
7 reference to the notification from CSC as of the
8 ACE claim?

9 A I don't know the specific dates, but
10 I believe that those would have been -- could
11 have started 2010, 2011. I'm not exactly sure
12 about that. And I believe that I was still
13 getting notice -- some notices through August of
14 2013.

15 Q And was Maggie your assistant in
16 2010, 2011 through 2013?

17 A No.

18 Q What was the name of your assistant
19 in 2010, 2011, through 2013?

20 A That would be Rabih, R-A-B-I-H
21 Colter, C-O-L-T-E-R.

22 But to make things a little more
23 complicated, that there used to be a paralegal in
24 our California office who used to receive these
25 and forward them as appropriate.

1 Direct - R. Sanders

2 Q And CSC, do you understand that to
3 stand for Corporation Services Company?

4 A Yes.

5 Q And so how many people receive
6 notices -- how many people at or related to
7 Colony receive notice from CSC related to the ACE
8 claim against MDLP, to the best of your
9 recollection?

10 MR. MITCHELL: Objection to form.

11 MR. SMITH: Objection to form.

12 | BY MR. BRESLIN:

13 Q Go ahead.

14 A Currently, our system is set up so
15 that the notices go to myself, to Maggie, and, I
16 believe, to my assistant GC, David Palame.

17 Q What was the system in 2010 or 2011,
18 who got them then?

19 A I believe it was our legal assistant
20 in California, whose name is Joy Mallory,
21 M-A-L-L-O-R-Y.

22 Q And she sits in the Colony Santa
23 Monica office?

24 A She did.

25 Who else got them in 2010 and 2011?

1 Direct - R. Sanders

2 A I don't remember if I was getting
3 them at that time or not.

4 Q Was your assistant getting them at
5 that time?

6 A I don't believe so.

7 Q Ms. Mallory was getting them at that
8 time?

9 A I believe so, yes.

Q When did you start to get them? Did
you start to get them in 2011 and 2012?

12 A I believe I started to get them when
13 Joy Mallory left the company.

14 Q Which was when?

15 A I don't know the specific date.

16 Q Do you know the year?

17 A Not specifically, no.

18 Q Do you have a recollection as to
19 whether you were getting notices from CSC related
20 to ACE's claim against MDLP in the year 2013?

21 A Through the electronic notification
22 system, I do remember getting notices relating to
23 the arbitration.

24 Q What did you do with those notices,
25 if anything?

1 Direct - R. Sanders

2 A I don't believe I really did anything

3 with them.

4 Q Did you send them to anyone?

5 A I don't believe so.

6 Q Did you forward them to anyone within

7 the company?

8 MR. MITCHELL: Object to the form of

9 the question. That's different --

10 MR. BRESLIN: It's because it's an

11 e-mail is because it's slightly different.

12 BY MR. BRESLIN:

13 Q Did you forward the e-mails to

14 anyone?

15 A I don't believe so.

16 Q Did you have a folder on your

17 computer where you put these e-mails?

18 A Yes.

19 Q Is that folder still in existence?

20 A It should be.

21 Q So on your work computer, there is a

22 folder containing the notices that you got from

23 CSC pertaining to ACE's claim against MDLP?

24 MR. SMITH: Objection to form.

1 Direct - R. Sanders

2 BY MR. BRESLIN:

3 Q Is that correct?

4 A There is a folder. I don't want to
5 say that every single notice I got was put in the
6 folder, but there's a folder that I believe has
7 notices relating to the ACE arbitration.

8 Q Did you forward that folder or any of
9 its contents at any time to anyone at Ameream?

10 A I don't think so.

11 Q Did you forward that folder or any of
12 its contents at any time to anyone related to any
13 Triple 5 entity?

14 MR. SMITH: Objection to form.

15 THE WITNESS: Not that I remember.

16 BY MR. BRESLIN:

17 Q Did you forward that folder or any of
18 its content to Mr. Calascibetta?

19 A Not that I remember.

20 Q How many times do you recall
21 receiving notices regarding the ACE claim against
22 MDLP?

23 A I wouldn't have a specific number.

24 Q More than five?

25 A Could be. There is -- there were a

1 Direct - R. Sanders
2 various offices of Colony Capital by process
3 servers defined generically?

4 A Yes.

5 Q In general, are those -- do those
6 documents find their way to you as the company's
7 general counsel?

8 A Generally, yes.

9 Q From time to time, are legal
10 documents received by Colony Capital through the
11 offices of the United States mail or Federal
12 Express or DHL?

13 A When you say legal documents, we're
14 still talking about --

15 MR. MITCHELL: That's where we get --
16 can we be specific in terms of legal
17 documents? What do you mean by legal
18 documents?

19 MR. BRESLIN: Documents related to
20 litigation.

21 THE WITNESS: Yes.

22 BY MR. BRESLIN:

23 Q And they are received from time to
24 time from the company in the mail or by Federal
25 Express or by some other method of moving

1 Direct - R. Sanders

2 | documents around, correct?

3 | A Correct.

4 Q And in the general course of things,
5 do those documents find their way to you as the
6 company's general counsel?

7 A Generally, yes.

8 Q And there is -- is there a written
9 protocol at the company that legal documents
10 related to litigations be sent to Mr. Sanders?

11 A I don't know if there's a written
12 policy to that effect.

13 Q Is there a de facto practice at the
14 company of sending documents related to
15 litigations to Mr. Sanders?

16 A Yes.

17 Q And are secretaries and mail room
18 people and other staff at Colony Capital, to your
19 knowledge, instructed that when legal documents
20 related to litigations come into the various
21 offices, that they be sent to Mr. Sanders?

22 A I think that's a little bit too
23 broad, "people in the mail room."

I believe that if those documents do come in, they'll end up in the hands of either

1 Direct - R. Sanders
2 people in New York who would know or if it's in
3 California, they would end up in the hands of
4 some of the legal assistants in California who
5 would know what to do with it.

6 But I don't think that there's
7 necessarily a company-wide protocol among
8 assistants and mail room persons and the like,
9 that says, if a document related to litigation
10 comes in, send it to Ron Sanders.

11 Q Will you say that the legal
12 assistants who would get these documents, would
13 know what to do with it, correct? You just
14 mentioned that on your prior answer.

15 A Yes.

16 Q And the knowing what to do with it,
17 quote/unquote, would be to send it to you,
18 correct?

19 A Correct. Or at a minimum, make me
20 aware of it.

21 | Page Thank you.

Let's mark this as `sanders` 2.

1 Direct = R. Sanders

2 A He is either a vice president or a
3 senior vice president.

4 Q Did he have any involvement with the
5 Colony 7, Colony 8 investment?

6 A He did also provide services on
7 behalf of this particular investment.

8 Q Do you know if he had any dealings
9 with ACE regarding the ACE claim?

10 A I believe that Varun also was on some
11 of the calls that I had with Mr. Toren and
12 others.

13 Q Do you know if Varun had any
14 communications with anyone from ACE in which you
15 were not a party?

16 MR. MITCHELL: Object to the form of
17 the question.

18 THE WITNESS: I don't know for sure,
19 but I doubt it.

20 BY MR. BRESLIN:

21 Q When did you first become aware that
22 ACE had instituted a claim for arbitration for
23 the unpaid premiums?

24 A I wouldn't know the specific date or
25 even the general timeline. It was some -- might

1 Direct - R. Sanders
2 have been 2010, 2011, but I'm not sure about
3 that.

4 Q You don't know -- you don't even have
5 a year in which you can give me as to when you
6 found out for the first time?

7 A I do not. As I mentioned earlier,
8 through the CSC electronic system, I would get
9 notices of the institution of the arbitration and
10 then I would get notices that the arbitration was
11 being adjourned and rescheduled, and that
12 happened a number of times.

13 So my recollection is from the first
14 notice until the arbitration hearing actually
15 took place, there was quite a long time between
16 those two.

17 Q And these were notices that you
18 placed in a folder on your desktop computer?

19 MR. MITCHELL: Object to the form of
20 the question.

21 BY MR. BRESLIN:

22 Q Are these notices that you placed in
23 a folder on your desktop computer?

24 A I believe I did. I may not have
25 gotten every one, but I -- generally, I believe I

1 Direct - R. Sanders
2 did.

3 Q And that folder is still on your
4 desktop computer, as we sit here today?

5 A Yes.

6 MR. MITCHELL: Can I hear that
7 question again?

8 (The Record was read back.)

9 MR. MITCHELL: Objection to form.

10 | BY MR. BRESLIN:

Q Is it still on your desktop computer,
as far as you know?

13 A Yes.

14 MR. BRESLIN: I would make a request
15 that nothing happen to it, obviously.

16 | BY MR. BRESLIN:

17 Q I may have asked you this before. If
18 I did, I apologize. In advance.

19 Do you recall when was the first time
20 you discussed this arbitration with a
21 representative of Triple 5, or anyone affiliated
22 with the purchaser?

23 A I don't recall specifically but my
24 guess is it would have been sometime during 2012.

25 Q Who did you discuss it with?

1 Direct = R. Sanders

2 A I believe it would have been with Joe
3 Calascibetta and -- what was the, if you can
4 remember, the content of that conversation?

5 A It was --

6 MR. SMITH: Sorry, when? What was
7 the time frame?

8 MR. MITCHELL: Sometime in 2012. I
9 have a recollection we did this already.

10 MR. BRESLIN: Possibly.

11 MR. MITCHELL: Why are we doing it
12 again?

13 MR. BRESLIN: Because I want to.

14 MR. MITCHELL: You don't do things
15 twice. We did this, we went through all
16 the conversations.

17 MR. BRESLIN: This is a different
18 area. Are you instructing him not to
19 answer?

20 MR. MITCHELL: I'll let it go for a
21 couple of questions, but I'm not going to
22 have -- we're not repeating testimony.

See if it's different. If it turns out to
be the same, then we'll stop there.

25 THE WITNESS: It would have been in

1 Direct - R. Sanders
2 the context of -- as part of the
3 negotiation of the purchase agreement in
4 the context of alerting him that this
5 claim was there.

6 And our agreement that the claim
7 stays with MDLP and that would not be
8 MDLP's responsibility after the closing.

9 BY MR. BRESLIN:

10 Q Are you aware whether MDLP defended
11 the claim for arbitration that was made by ACE?

12 A I do not believe MDLP did defend that
13 arbitration.

14 Q Why?

15 MR. MITCHELL: You can answer the
16 question without revealing any privileged
17 communication. Do so if you can only do
18 it by not revealing privilege. And state
19 that -- or I will direct you not to
20 answer.

21 | Can you talk about this?

22 THE WITNESS: Yeah, I mean I wouldn't
23 mind.

24 (Off the record.)

25 MR. MITCHELL: I've consulted with my

1 Direct - R. Sanders
2 client off the record. You have the
3 answer that a decision was made, that the
4 arbitration would not be defended. The
5 reasons why are privileged and we're
6 asserting attorney/client privilege with
7 respect to any determination made as to
8 why that was the decision.

9 | BY MR. BRESLIN:

10 Q Can you tell me who made the decision
11 not to defend the arbitration? Not what was
12 said, simply who made the decision?

13 MR. MITCHELL: He's unable to
14 answer --

15 MR. BRESLIN: No, no, no. Either
16 object, but don't answer the question.

17 MR. MITCHELL: I'm not. I'm
18 directing the witness not to answer on the
19 grounds of attorney-client privilege.

20 MR. BRESLIN: A who question is not
21 subject to the attorney/client privilege.

22 It's not calling for the content of any
23 legal advice that he gave to anyone or any

— 1 —

1 Direct - R. Sanders
2 person who made the decision. That cannot
3 be privileged.

4 MR. MITCHELL: I'm directing the
5 witness not to answer on the grounds of
6 privilege.

7 BY MR. BRESLIN:

8 | Q Was that --

9 MR. MITCHELL: Can I just -- sorry.

10 (off the record.)

11 MR. MITCHELL: Back on the record.

12 Mr. Sanders will identify the person
13 who made the determination.

14 MR. BRESLIN: Thank you, Counsel, I
15 appreciate that.

16 THE WITNESS: That was my decision.

17 | BY MR. BRESLIN:

18 Q Thank you, Mr. Sanders, I appreciate
19 it.

20 Who made the decision not to defend
21 the ACE arbitration?

22 | MR. MITCHELL: He just --

1 Direct - R. Sanders

2 BY MR. BRESLIN:

3 Q I'm sorry, I thought you said the
4 decision to answer the question was yours. I
5 apologize.

6 A No.

7 Q Did you consult anyone at the State
8 of New Jersey before you made that decision?

9 A That sounds like that's getting into
10 some privileged stuff now.

11 Q That would be conversations with a
12 third party from the State of New Jersey.

13 MR. MITCHELL: You can answer that.

14 THE WITNESS: Okay. No, I did not.

15 BY MR. BRESLIN:

16 Q Did you consult anyone at any Triple
17 5 entity, including Ameream, before you made that
18 decision?

19 MR. MITCHELL: You can answer that.

20 THE WITNESS: No, I did not.

21 BY MR. BRESLIN:

22 Q Did you inform anyone at any of the
23 Triple 5 entities, including Ameream, after you
24 made that decision?

25 A I don't recall a specific